

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

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THE HONOURABLE MS. **JUSTICE R.MALA**

**CRP.PD.NO.4414 of 2015**

**and M.P.No.1 of 2015**

M.Kandasamy (unsound mind)  
represented by his nephew and  
guardian D.Suresh Babu

...Petitioner/1<sup>st</sup> Defendant

Vs

1. G.Balasubramanian

.. 1<sup>st</sup> Respondent/Plaintiff

2. S.Dhamayanthi

3. Kasi Viswanathan

.. 2 & 3 Respondents/Defendants 2 & 3

Civil Revision Petition filed under Article 227 of the Constitution of India to allow the Civil Revision Petition by setting aside the fair and decreetal order dated 03.11.2014 passed by the learned II Additional Judge, City Civil Court, Chennai made in I.A.No.1217 of 2012 in O.S.No.8156 of 2011.

For Petitioner : Mr.Samir S.Shah  
for M/S.Shah and Shah

For R1 : Mr.M.Arunkumar for  
M/S.Sampathkumar Associates

**ORDER**

Civil Revision Petition is filed against the fair and decreetal order dated 03.11.2014 in I.A.No.1217 of 2012 in O.S.No.8156 of 2011 on the file of the II Additional City Civil Court, Chennai.

2.The first respondent herein as a plaintiff filed a suit in O.S.No.8156 of 2011 for recovery of possession and for past and future damages for use and occupation, against three persons. During pendency of the suit, one Suresh Babu, who is the nephew of the first defendant, has filed an application in I.A.No.1217 of 2012 to appoint him as guardian for the first defendant in O.S.No.8156 of 2011 stating that the first defendant is a person of unsound mind and he is not capable of protecting his interest. On 18.01.2013, when the matter has taken up for hearing, even though D2 and D3 served with notice, they did not present, hence they called absent and set exparte. The trial Court after hearing the submissions made by the revision petitioner/first defendant and first respondent/plaintiff, dismissed the application, against which, the present revision has been preferred by the guardian Suresh Babu on behalf of the first defendant.

3.Learned counsel for the revision petitioner submits that the trial Court has held that the medical documents relied upon by the revision petitioner are of the year 2003 and there is no recent document to hold that the first defendant is suffering from mental illness. Learned counsel further submits that now he is ready to file the documents to show that the first defendant is suffering from mental illness. However, he submits that the first defendant is taking treatment in the Government Psychiatric Hospital, which is not a periodical check up. Even though the first defendant's wife is alive, nephew of the first defendant has filed the application, since his wife has taken care of her minor daughter and her husband. Therefore, he prayed for allowing the revision.

4.Resisting the same, learned counsel for the first respondent/plaintiff submits that the documents filed by the revision petitioner are of the year 2003. Thereafter only, the first defendant has entered into a sale agreement with the third defendant and also executed the General power of attorney in favour of the third defendant in the year 2005. It shows that while executing the afore said deeds, the first defendant was in sound mind and was a sane person. Even though the trial Court has not considered the above

aspect while dismissing the application, it dismissed the application on the ground that due to unsound mind, the first defendant cannot permit any other person to pursue the suit on his behalf. Moreover, his wife is alive, hale and healthy and she can very well defend the suit on behalf of him. The trial Court has rightly dismissed the application. Therefore, he prayed for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the materials available on record.

6.The first respondent herein as a plaintiff filed the suit for recovery of possession and also for past and future damages for use and occupation stating that the first defendant is the owner of the suit property, he got the same by way of settlement deed executed by his mother viz., Karunambal. Thereafter, he entered into a sale agreement with the third defendant on 22.08.2005 vide registered Document No.1004 of 2005 and also executed the power of attorney in favour of the third defendant on 22.08.2005 vide registered Document No.1614/IV/2005, empowering him to sell the suit property. The third defendant as Power agent sold a portion of the property to the second defendant vide registered sale deed dated 23.11.2005 and remaining

portion has been sold in favour of the plaintiff under sale deed dated 08.07.2011. But possession has not been handed over to the plaintiff/first respondent. Hence, the plaintiff filed the suit. Even though the defendants 2 and 3 served with notice, they did not appear before the trial Court and hence, they set exparte on 18.01.2013 itself. Even though the first defendant appeared through his counsel, he did not file the written statement. Subsequently, his nephew has filed the present application for permit him to act as a guardian on behalf of the first defendant.

7. Now this Court has to decide as to whether the impugned order passed by the trial Court is sustainable or unsustainable? Admittedly, the application has been filed under Order 32 Rule 3 and 15 C.P.C. only in the year 2012 belatedly stating that the first defendant is an insane person. The documents relied upon by the revision petitioner are related to 15.10.2003 and 21.10.2003. But no document has been filed to show that what is his ailment and what treatment he has taken. It is to be noted that after the medical documents came into existence, the first defendant has executed the power of attorney and sale agreement in respect of the suit property in favour of the third defendant on 22.08.2005. Under such

circumstances, no reliance can be placed on the medical documents under Exs.P3 and P4 relied upon by the revision petitioner/first defendant.

8. It is pertinent to note that the wife of the first defendant is alive. Once the person is insane, the person, who is having real interest or his spouse ought to have approached the appropriate forum to declare him as an insane person and also appoint a person as a guardian for both the person and his property. But no step has been taken by the counsel for the first defendant after filing vakalat. One Suresh Babu, who is alleged to be a nephew of the first defendant has filed the application to appoint him as a guardian on behalf of the first defendant. But no document has been filed by the said Suresh Babu to show that he is a nephew of the first defendant. Under such circumstances, the trial Court has rightly dismissed the application by holding that the application was filed without filing any recent document to show that the first defendant is suffering mental illness and hence, he sought for appointment of guardian. So the impugned order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The Civil Revision Petition deserves to be dismissed and it is hereby dismissed.

9.The trial Court, uninfluenced by any of the observations made by this Court in this order, shall dispose of the suit on merits.

10..In fine, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**22.12.2015**

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To

II Additional Judge, City Civil Court, Chennai.

**R.MALA,J.**

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